

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: LOS ANGELES, CALIFORNIA

Date: JUN 09 2004

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant is the beneficiary of an approved petition for alien relative filed by his U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the United States and reside with his U.S. citizen spouse and children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying family members. The application was denied accordingly. *See District Director's Decision* dated December 16, 2003.

On appeal, counsel asserts that the Immigration and Naturalization Service (now known as Citizenship and Immigration Services, "CIS") erred in denying the waiver application and that the evidence in the record establishes extreme hardship to the applicant's U.S. citizen spouse and children.

Section 212(a)(2) of the Act states in pertinent part, that:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

. . . .

Section 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

. . . .

(1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

The record reflects that on April 26, 1987, the applicant was convicted for the offense of Assault with Weapon Likely to Produce Bodily Harm and Inflict Corporal Injury on Spouse in violation of sections 245(A)(1) and 273.5(A) of the Penal Code. On October 9, 1990, the applicant was convicted again of violation of section 273.5(A) of the Penal Code, Inflict Corporal Injury on Spouse. The applicant is inadmissible to the United States due to his convictions of crimes involving moral turpitude.

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be

considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse or children.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel submits a brief and affidavits from the applicant's spouse and daughter. In her affidavit the applicant's spouse (Ms. [REDACTED]) states that she and her children will suffer financially if the applicant is not permitted to remain in the United States. Ms. [REDACTED] states that it would be devastating for her children if the applicant was forced to leave the country and could not remain together as a family. She further states that it will be difficult for her to meet her monthly financial obligations and her children would not be able to continue attending private school. In counsel's brief, and in her affidavit, it is stated that M. [REDACTED] suffers from a tumor in a pituitary gland and that one of her daughter's has been diagnosed with hypothyroidism and vitiligo. Hypothyroidism is a condition in which the body lacks sufficient thyroid hormone and vitiligo is a skin condition. According to documentation provided by counsel the applicant's daughter is receiving medication for both hypothyroidism and vitiligo and needs to be reassessed with blood tests every 3-4 months. Ms. [REDACTED] condition does not require surgery and according to her endocrinologist her condition can be controlled with medication and does not affect her ability for employment. There is no independent corroboration to show that their medical conditions would be jeopardized if they decide to relocate to El Salvador with the applicant. Counsel further states that if the applicant is not permitted to reside in the United States his family will lose the medical coverage he receives through his employment. The record reflects that the applicant's spouse is employed full time and no reason was given why she would not be eligible to receive health coverage for herself and her children through her employment. No evidence has been provided to substantiate that her husband's financial contribution is critical to Ms. [REDACTED] or her children lifestyle or well being. Ms. [REDACTED] 2002 Federal taxes indicate that she earned a salary above the poverty guidelines for a family of three.

The record of proceedings does not make it clear whether the applicant's spouse and children would follow him to El Salvador if he were removed. Obviously if the applicant is removed to El Salvador his U.S. children will suffer hardship but there is no indication that the children do not speak Spanish or would not be able to adjust to life in El Salvador if they were to relocate with the applicant. If the children were to accompany the applicant to El Salvador, it would be expected that economic, linguistic and cultural difficulties will arise. No evidence exists that this will specifically impact them at a level commensurate with extreme hardship.

Counsel further states that if the applicant returns to El Salvador it will be difficult for him to re-adapt to his native country because he has been living in the United States for many years. Ms. [REDACTED] states that if the applicant is returned to El Salvador he would be devastated as he would need to start a whole new life from the beginning.

"Extreme hardship" to an alien herself cannot be considered in determining eligibility for a section 212(i) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the all the factors presented, and the aggregate effect of those factors, indicates that the applicant's spouse and children would suffer hardship due to separation. The applicant has failed, however, to show that his qualifying relatives would suffer extreme hardship over and above the normal social and economic disruptions involved if the applicant was not permitted to remain in the United States at this time. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.